Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

POOJA GOSWAMI, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, PETITIONER

v.

AMERICAN COLLECTIONS ENTERPRISE, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Court of Appeals has ruled that a collection agency can put "benign language" on the outside of an envelope containing a collection letter, even though the statute, Section 1692f(8) of the FDCPA, says a debt collector cannot put any language except a return address and a name. This decision will impact millions of American consumers across the country. It is the difference between millions of collection envelopes going through the U.S. mail containing nothing on the outside except a return address and millions of collection envelopes going through the U.S. mail containing words and symbols that a debt collector thinks it can argue is "benign." Given the importance of this issue, this Court should review the following questions:

1. Whether Courts should look only at the plain text of Section 1692f(8) of the federal Fair Debt Collection Practices Act or look to FTC Staff Commentary and Legislative History to interpret the statute's meaning?

2. Whether Congress intended Section 1692f(8) of the federal Fair Debt Collection Practices Act to have an exception for "benign language" placed on the outside of a collection envelope sent to a debtor?

PARTIES TO PROCEEDING

Petitioner is Pooja Goswami.

Respondent is American Collections Enterprise, Inc.

RULE 29.6 STATEMENT

Pooja Goswami is an individual who resides in the State of Texas.

American Collections Enterprise, Inc. ("ACEI") is a corporation organized and existing under the laws of the Commonwealth of Virginia and has its principal office located at 6032 Cliff Drive, Alexandra, Virginia 22315. ACEI is a collection agency engaged in the business of collecting delinquent consumer debts from consumer debtors on behalf of creditors. ACEI is privately owned by individual shareholders. ACEI is not owned by a parent and is not a public company.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Pooja Goswami respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit was published at 377 F.3d 488 (5th Cir. 2004). (App. at 1a). Petition for Rehearing was denied with opinion at 395 F.3d 225 (5th Cir. 2004). (App. at 20a).

The decision of the United States District Court is published at 280 F.Supp.2d 624 (S.D. Tex. 2003). (App. at 14a).

JURISDICTION

The United States Court of Appeals for the Fifth Circuit issued its opinion on July 28, 2004. (App. at 1a). Petition for rehearing was denied on December 22, 2004, with opinion. (App. at 20a). The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

RELEVANT STATUTORY PROVISIONS

The relevant statutory provision involved is 15 U.S.C 1694f and is attached at App. at 29a.

STATEMENT OF THE CASE

Pooja Goswami, a consumer debtor, filed suit against American Collections Enterprise, Inc. ("ACEI") for violating Section 1692f(8) of the FDCPA by sending her a collection letter in an envelope with the words "PRIORITY LETTER" written across the outside front of the envelope. Jurisdiction in the trial court was based on 28 U.S.C. § 1331, because the case involved a federal question, and on 28 U.S.C. §1337(a).

The District Court held that ACEI's use of the envelope did not violate section 1692f(8).[1] The District Court reasoned that although the plain language of section 1692f(8) prohibits placing any language on the outside of an envelope except the return address of the debt collector and the debt collector's name (if there is no reference to debt collection in the name), that such a statutory prohibition would be an unconstitutional restraint of a debt collector's free speech if strictly construed.[2] The District Court divined that Section 1692f(8) was meant to protect debtors from "extra embarrassment by shielding the nature of debt collection letters from others."[3] The District Court held that the language "PRIORITY LETTER" was not a message that "a disinterested, reasonable person" would understand to refer to "the addressee's status as a deadbeat."[4]

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[1] *Goswami v. American Collections Enterprise, Inc.*, 280 F.Supp.2d 624, 627 (S.D. Tex. 2003).

[2] 280 F.Supp.2d at 626.

[3] 280 F.Supp.2d at 627.

[4] *Id.*

Petitioner appealed to the United States Court of Appeals for the Fifth Circuit. The Court of Appeals affirmed the judgment of the District Court with respect to ACEI's envelope.[5] In its opinion, the Court of Appeals ignored the First Amendment discussion relied upon by the District Court to justify looking behind the plain language of the statute. The Court of Appeals instead reasoned that because the statute was ambiguous it would look beyond the text of the statute. The Court of Appeals found Section 1692f(8) ambiguous, because it found that there was more than one reasonable interpretation of that statute. Reading Section 1692f(8) in isolation, the Court of Appeals acknowledged that the language to bar any markings whatsoever on the outside of the envelope other than the names and addresses of the parties.[6] Reading Section 1692f(8) together with the opening paragraph of Section 1692f, which prohibits "unfair and unconscionable conduct," the Court of Appeals understood that the language could then be understood to bar only markings that "would signal that it is a debt collection letter" or would "tend to humiliate, threaten, or manipulate debtors."[7] This second reading was found to exemplify the alleged ambiguity.

After reaching the conclusion that the text of Section 1692f(8) was ambiguous, the Court of Appeals looked beyond the text of the statute to interpret its meaning. The Court of Appeals first looked at the FTC's Staff Commentary on Section 1692f, with which

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[5] *Goswami v. American Collections Enterprise, Inc.*, 377 F.3d 488, 494 (5th Cir. 2004).

[6] 377 F.3d at 493.

[7] *Id.*